

Product Stewardship (Oil) Amendment Regulations 2003 (No. 2) 2003 No. 294

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 294

Minute No. 12 of 2003 - Minister for the Environment and Heritage

Subject: *Product Stewardship (Oil) Act 2000*

Product Stewardship (Oil) Amendment Regulations 2003 (No. 2)

Section 37 of the *Product Stewardship (Oil) Act 2000* (the Act) provides that the Governor-General may make Regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act reduces the environmental impact of waste oil by imposing a product stewardship (oil) levy on virgin oils and lubricants. The levy is used to fund the payment of product stewardship (oil) benefits to eligible recyclers of waste oil for appropriate waste oil products recycled and sold in Australia. Before these changes, the *Product Stewardship (Oil) Regulations 2000* (the Regulations) specified seven categories of benefits payable to oil recyclers for recycled oil products.

The product stewardship (oil) levy arrangements currently apply to some multi-use oils with specific end-uses that do not create a recyclable waste stream and represent only low levels of risk to the environment. The Act was recently amended to provide an effective exemption for these oils and end-uses from the product stewardship (oil) levy. The amendments provide an entitlement to a product stewardship (oil) benefit for a *gazetted* oil and *gazetted use*, as declared by the Minister for the Environment and Heritage in a notice published in the Gazette. This type of product stewardship (oil) benefit is different to the other benefit categories (1 to 7) as it is a payment to an oil user rather than an oil recycler.

The Regulations add a new category to the product stewardship (oil) benefits, paid for a "gazetted oil consumed in Australia for a gazetted use". The amount of product stewardship (oil) benefit that can be claimed on this new category [category 8] is 5.449 cents per litre, which is equivalent to the product stewardship (oil) levy. The Minister for the Environment and Heritage will declare the gazetted oil and gazetted use in the Gazette.

Details of the Regulations are set out in the Attachment.

The Regulations commenced on 1 December 2003. Subsection 9(4) of the Act provides for a new category of benefits to be claimed from the date the Bill for the *Product Stewardship (Oil) Legislation Amendment Act (No. 1) 2003* was introduced into Parliament (27 March 2003). The Regulations therefore have a specified retrospective effect. Subsection 48(2) of the *Acts Interpretation Act 1901* provides that a regulation has no effect if it would take effect before the date of notification (i.e. 1 December 2003) and, as a result, liabilities would be imposed, or rights would be affected so as to disadvantage a person, other than the Commonwealth. The Commonwealth is the only party to bear a cost in relation to the effective retrospectivity of the Regulations. Therefore, the Regulations satisfy subsection 48(2) of the *Acts Interpretation Act 1901*, and may be validly made with retrospective effect.

Authority: Section 37 of the *Product Stewardship (Oil) Act 2000*

Attachment

Details of the *Product Stewardship (Oil) Amendment Regulations 2003 (No. 2)*

Regulation 1 provides that the name of the Regulations is the *Product Stewardship (Oil) Amendment Regulations 2003 (No. 2)*.

Regulation 2 provides for the Regulations to commence on 1 December 2003.

Regulation 3 provides that Schedule 1 to the *Product Stewardship (Oil) Amendment Regulations 2003 (No. 2)* amends the *Product Stewardship (Oil) Regulations 2000*.

Schedule 1. Item 1

Subregulation 4(1), except the table-The subregulation is substituted.

This subregulation defines the eligibility to claim from the table:

(a) for a recycled oil - the amount relating to the first category in items 1 to 7 that applies. These categories reflect the different types of recycling that can be applied to used oil.

(b) for a gazetted oil for a gazetted use - the amount relating to item 8. This category is the new category.

Item 2

Table in Subregulation 4(1)-A new item (item 8) is added to the table. The category is gazetted oils and gazetted uses as declared by the Minister for the Environment and Heritage. The Amount (cents/1) of product stewardship (oil) benefit is 5.449 cents/1.

Item 3

Subregulation 4(I), Note-A note will be inserted, after the example, that the Minister will declare an oil or a use to be a gazetted oil or a gazetted use as defined in subsection 6 (1) of the Act.